

## **BOARD OF ZONING APPEALS**

### **Minutes**

**October 26, 1999**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on October 26, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER, FLOYD PITTS, JUANITA SWANN, DAVE BABICH, DOUG MALONE, RANDY PHILLIPS, JOHN ROGERS present.

The following Planning Department staff members were present: Secretary, DALE MILLER, Assistant Secretary, LISA VERTS and Recording Secretary, ROSE SIMMERING.

Also present were J.R. COX, Office of Central Inspection, SHARON DICKGRAFE, Law Department.

**1. Approval of the minutes of April 20, 1999 and June 22, 1999.**

**FOSTER moves and ROGER seconds to approve minutes for April 20, 1999 and June 22, 1999.**

**MOTION CARRIES 7-0.**

**2. Case No. BZA 23-99, Via Christi Regional Medical Center (lessee), pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow an increase in the number, height and size of building signs on property legally described as follows:**

**A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10<sup>th</sup> Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the northeast corner of Harry Street and Clifton Street.**

**MALONE:** Abstains, conflict of interest with this case.

**VERTS:** Presents staff report and slides.

**BACKGROUND:** The applicant, Via Christi Regional Medical Center, requests a variance to increase the size and height of a building sign for their St. Joseph Campus located at 3600 E. Harry Street. The proposed building sign would be 355 square feet and placed 88 feet above grade on the south façade of the existing 7-story single-use building. This façade is approximately 380 feet north of Harry Street; the area between the building and the street is used for on-site parking. Currently, this building has one

building sign that identifies the Emergency Entrance on the west façade. In August 1984, the BZA approved a variance, BZA 52-84, to increase the size of this building sign from the allowable 32 square feet to 64 square feet.

In 1996 the applicant changed its corporate name from St. Joseph Medical Center to Via Christi Regional Medical Center. In that same year, they applied for and received Board of Zoning Appeals approval to increase the size, number, and height of building signs (BZA 5-96); essentially the same application as the one presented here. One of the conditions on that decision was that the sign be installed within one year or the resolution granting the variance would become null and void. For various reasons, Via Christi failed to meet this condition, necessitating this request.

The sign code permits illuminated building signs in the “GO” General Office District, with the following limits: building signs are not to exceed 32 square feet in size; not be greater than 30 feet in height; and only one sign per elevation is permitted for each major use in the building. Therefore, the applicant must obtain two variances to allow the new building sign to be installed: (1) increase the sign from 32 square feet to 355 square feet; and (2) increase the height from 30 feet to 88 feet.

These sign restrictions, with only minor changes, have been part of the development regulations since 1974, when the sign code was first adopted. Several multi-story buildings, such as the Northrock Inn at 29<sup>th</sup> and Rock Road, the American National Bank of Wichita near Kellogg and Rock, and the Riverside Health System Hospital have obtained variances to permit building signs at heights and sizes greater than allowed by the code.

The building sign will be located on the south façade of the building and will be directed toward property that is developed as on-site parking north of Harry Street and commercial uses on the south of Harry Street. The applicant has submitted a site plan and sign design for the proposed sign. The sign, which will read “Via Christi – St Joseph Campus,” will be 80 feet long with letters that are 4 feet 4 inches tall (lower case letters are smaller) and will be “halo-lit” with posterization behind each word of the sign for reflective purposes.

The applicant will also be placing a small cross emblem sign on the west façade at the top of the building. The City of Wichita Sign Code exempts logo signs or emblems of a religious organization that do not include advertising language. No variance is required for this emblem sign.

#### **ADJACENT ZONING AND LAND USE:**

NORTH	“LC” & “TF-3” – Single Family Homes and Medical Offices
SOUTH	“LC” – Retail (Flower Shops and Fast Food)
EAST	“GO” & “LC” – Retail (Fast Food)
WEST	“LC” & “B” – Medical Offices (Clifton Medical Center)

**Variance #1: Variance to increase the size of a building sign from 32 square feet to 355 square feet.**

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the building is seven stories tall and is being used as a full-service hospital facility that is considered a single use and therefore is limited to one 32 square foot building sign.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the scale of the sign on a 7-story building should not impact surrounding properties and will not face toward residential areas.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as a 32 square foot sign would be insufficient to adequately identify this structure, which is located almost 400 feet from Harry Street.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the sign would actually serve the public interest by providing adequate building identification. The larger sign could be seen from a sufficient distance to permit planned access to the site on which emergency medical services are provided to the public.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the increased size is congruous with the large building and layout of the site.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance in size for a building sign be GRANTED, subject to the following conditions:

1. This increase in sign size to 355 square feet shall be limited to one building sign located near the top of the south façade at the west end of the main hospital building as indicated on the submitted elevation drawing.
2. The larger sign approved by this variance shall be limited to a non-flashing “halo-lit” sign with posterization and shall conform to the submitted elevation drawing and sign design. The posterization shall be the same color and texture of the building facia.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

**Variance #2: Variance to increase the height of a building sign from 30 feet to 88 feet.**

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the building is seven stories tall and is being used as a hospital facility that provides emergency medical services to the public.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as all properties to the south, east, and west are commercially developed. Additionally, residents who live to the north will not be able to see the sign from their homes. Furthermore, the lighting of the signs will be limited to internal illumination only and should not add measurably to the illumination already existing in this area.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicant has made a substantial investment and established the only full-service hospital serving the south side of the community. Without a building sign similar to the one proposed, this presence would not be easily identified.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the requested sign height is in character with the size of the building. The limitations on lighting will keep the sign from being a distraction to motorists or residents in the area.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the intent is to provide adequate, but not excessive signage, for all properties. No provisions are made for building signs on mid-rise or high-rise structures.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance in the height of a building sign be **GRANTED**, subject to the following conditions:

1. The only building sign located above the height limits specified in the sign code shall be installed on the south façade at the west end of the main hospital building as indicated on the submitted elevation drawing.
2. The building sign approved by this variance shall be limited to a non-flashing “halo-lit” sign with posterization and shall conform to the submitted elevation drawing and sign design. The posterization shall be the same color and texture of the building facia.
3. The sign shall be installed within one year of the resolution granting this variance shall become null and void.

**VERTS:** I will be happy to answer any of the questions you may have.

**PITTS:** Any questions for the staff?

**FOSTER:** Ms. Verts, this is probably an unfair questions for you because you were not there, but, could you make some comparison as what had been approved before? Can you say how much difference it is?

**VERTS:** What had been approved before, let me go back to the elevation drawings. This is really just half of the building, this being the center, the other half extending off towards the right of the screen. The other sign was placed in the center at the top of this center portion. It was in two layers spreading the lettering out in two rows with smaller letters. But, if I can recall, I think there was actually more text involved in that. I am hearing a "yes" from the audience.

**FOSTER:** Would you say they are just minor differences?

**VERTS:** I would say there are minor differences in the square footage. There is a slight increase in this sign in the square footage. But, there is less text. I think that everything was spelled out. I think Russ can probably speak to this a little clearer then I can as to what the old sign was.

**FOSTER:** This other question may be something Dale, maybe we should have a discussion on sometime. But, Mr. Chairman, I note in the text in the second variance under the spirit and intent it talks about no provisions are made for building signs on mid-rise or high-rise structures.

**PITTS:** Where are you reading?

**FOSTER:** On page four, Variance #2, under spirit and intent.

**PITTS:** Okay.

**FOSTER:** I was just curious is this something that we are going to keep receiving? Is this something that should be addressed in the sign code? I am not sure that this is germane to the presentation today but I just wonder, Dale, if this is something that should be addressed at some future time in the sign code? In other words, the heights of these buildings do not seem to be addressed.

**MILLER:** There was an attempt to amend the sign code. Second time since I have been here anyway and it has been put on hold. So that is probably a legitimate thing to look at when that committee gets back up again. On the other hand, there is not that many tall buildings that we have had requests for signs for. I think over time, most of them have been hospitals: Via Christi, Wesley, Riverside etc. American Financial Center has got a sign that is up pretty high similar to this.

**FOSTER:** They still have to pay several hundred dollars to apply and they have to take time to do it and so forth. It is something we might discuss to in the future.

**PITTS:** Any other questions of staff?

**PHILLIPS:** I apologize for walking in late. I am not involved in this project, Via Christi is a client of mine, and we are working on campus, so I will have to declare a conflict of interest of this case and remove myself.

**PITTS:** Okay, Randy Phillips, and Doug Malone removed themselves on this and we have two present that will not be joining us in discussion. Is there any member in the audience to speak in favor of the variance? State your name for the record please.

**RUSS EWY, BAUGHMAN COMPANY AGENT FOR THE APPLIANT VIA CHRISTI REGIONAL MEDICAL CENTER:** As Lisa pointed out, we are seeking these variances that are quite similar to the variances that were approved in March of 1996. We also had applied for a third variance. That being the number of permitted building signs in the General Office district and evidently between meeting with the Office of Central Inspection, Planning Staff, and the sign company they had evidently been waved as a requirement of ours. So, I guess we are just hearing these two variances. We met with CPO Council 3, about two weeks ago and they recommended approval, unanimously. It is quite straightforward what we are asking for and I would be more than happy to answer any questions. As would be Michael Bankston of Boggs Sign Company and Bob Copple of Via Christi/ St. Joseph.

**PITTS:** Russ, I don't think I quite understand. Are you saying that you actually applied, along with the applicant for three variances and today you find out there are only two before us?

**EWY:** In 1996, the application was for those three variances. One was to increase the building sign size from 30 square feet or 32 square feet up to 336 square feet. The second was to vary the height as we are doing again today up to the 88 feet. There was a third variance that permitted an additional building sign. You are permitted one building sign per elevation and at that time they had included that as part of the application.

**PITTS:** As I understand it however in the absence of that request, and if that has not been fulfilled by the previous variance than that is not no longer applicable. Any other questions for Mr. Ewy?

**BABICH:** I would question in the hardship, in the public interest that it describes the necessity for this sign and its height and its size. To identify the building, and yet it does not describes itself as a hospital anywhere. Is it possible that we would be back here to further describe what this facility is? It is well known to most of us, but if we are to identify the facility it does not seem to do that.

**EWY:** I am not going to argue that point. The original sign variance in 1996, that we talked about did have wording to the effect of Regional Medical Center. Perhaps someone else, Mr. Copple would be better able to answer that question as to the actual

lettering of the sign.

**ROBERT COPPLE, DIRECTOR OF FACILITIES MANAGEMENT FOR VIA CHRISTI REGIONAL MEDICAL CENTER:** Actually, the decision to not have the full verbiage, Via Christi Regional Medical Center, comes from a couple of I guess changes, or changes of direction for the medical center. One, as far as from a branding standpoint, we are trying to identify ourselves as Via Christi Facilities, not specific to that this is a Regional Medical Center and this happens to be something else.

The second thing is specific to the St. Joseph Campus we have a number of services that are provided there, that are really not hospital related. They are health related but they are not a typical hospital. The St. Joseph campus tends to be more of our ambulatory facility. While we do still provide surgery, general medical surgery, OB, that sort of service, really the intent is to identify the building as a Via Christi Facility, but kind of leave open the option of what services are being provided there.

I understand the need if you want to identify it as a hospital. Our hope is that people will know what Via Christi is. If you are coming to a Via Christi building, it must be for health care. If we are not doing that, then maybe we have a marketing issue that we need to address as well. I do not mean to make light of your comment. There has actually been a fairly serious discussion internally about not saying Regional Medical Center that was made with intent to not include that.

**FOSTER:** Mr. Chairman, the sign regulations do not address the content of the speech. We are talking about a First Amendment Right. So, even though it is a good question, if I might say, I think the applicant should be aware that this Board does not have control over the wording that goes on the sign. Am I right Dale?

**MILLER:** That is correct.

**BABICH:** Mr. Chairman, the context in which I address the question was in the hardship and public interest, which does speak to identifying the building. I recognize that we can not control the <taste> of verbiage.

**PITTS:** Any other questions for the applicant? Is there anyone in the audience to speak against the variances. If not, we will confine the discussion to the bench. I must admit, that I would be being a little bit less than candid, if I did not look upon the hardship case and say that we have waited three years before doing anything about something that we had granted before. So I do not know how we could actually commit ourselves to that being a hardship case if that is one of the criteria, that we must be confronted with. Any other members to speak for or against this variances?

**FOSTER:** I am under the impression that they were in mergers and changing conditions. So I don't doubt that that may have had something to do with it. That is just speculation on my part. I think it is not an unreasonable request. After all, this setback I think is like 380 feet one of them, the parking lot is front, so it does not seem to be an unreasonable

thing from a distance from the public street that we are talking about. And it is not that much difference from the previous request. Unless there is other comments Mr. Chairman I would be prepared to make a motion.

**FOSTER moves and SWANN seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set forth in the secretary report and this is the variance 23-99 #1. This is to increase the maximum size from 32 square feet to 355 square feet.**

**MOTION CARRIES TO APPROVE BZA 23-99 VARIANCE #1 vote 5-0.**

**PITTS:** Variance Number #2, the chair is open for a motion.

**FOSTER moves and ROGERS seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set forth in the secretary report and this is the variance 23-99 #2. This is the to increase the height of a building sign from 30 feet to 88 feet.**

**MOTION CARRIES TO APPROVE BZA 23-99 VARIANCE #2 vote 5-0.**

**3.Case No. BZA 24-99, Clark Hospitality, c/o Paul Clark, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to allow an increase in the number, height and size of building signs and to allow an increase in the number, height and size of pole signs on property legally described as follows:**

**A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10<sup>th</sup> Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at the northwest corner of Webb and 29<sup>th</sup> Street North.**

**PITTS:** Okay, we have got, four different variances in this proposal. And we will treat this the same way that we did 23-99? One at a time? Or all at once?

**PHILLIPS:** You actually have two variances. You have two for the building sign and two for the pole sign. Can we split them on a sign basis?

**PITTS:** We can do it any way that the members would like to do it.

**MALONE:** I think that is a good idea.



**PHILLIPS:** Consider the two variances, which would be application #1 and #2 for the building sign. An application #3 and #4 for the pole sign.

**PITTS:** Okay staff. I think you heard the comments.

**VERTS:** Presents staff report and slides.

**BACKGROUND:** The applicant is requesting variances for signage for Mainstay Suites, an extended stay hotel, at the northwest corner of the intersection 29<sup>th</sup> Street North, Webb Road and K-96. This hotel has been in operation for approximately 4 months. The property on which the hotel is situated is zoned "GO" General Office, which allows a hotel provided the lot size is greater than 25,000 square feet. The lot in question is 2.62 acres, well in excess of the minimum size required for this use. Despite the acceptability of a hotel use in the "GO" District, the City of Wichita Sign Code has greater restrictions on signage in the "GO" District than would be found in other commercial districts. These limits on size and height of pole and building signs are the impetus for the applicant's request for variance in the signage requirements.

Specifically, in the "GO" District, the Sign Code would permit the construction of a building sign on each elevation provided that the total square footage did not exceed 32 square feet and no sign was greater than 30 feet in height. Additionally, the Sign Code would permit one pole sign with a maximum square footage of 32 square feet and a maximum height of 20 feet.

Currently, the hotel has two building signs (southeast and northeast elevations) that total 128 square feet and one is at a height of 31.5 feet. The applicant received a height and size variance from the Board of Zoning Appeals (BZA 28-98) for these two signs in December of 1998.

The applicant is requesting an additional 64 square foot building sign on the northwest elevation at a height of 31.5 feet and a pole sign of 130 square feet at a height of 35 feet along the K-96 frontage. This requires two height variances and two size variances.

The surrounding uses are mixed in nature and include residential, hotels, and vacant property, also zoned "GO". Across K-96 to the north is another hotel, Candlewood Hotel, which is on property zoned "LI" Limited Industrial. Directly to the south a Marriott Courtyard is under construction on property zoned "LC" Limited Commercial. Both of these districts allow more signage than is allowed in the "GO" District for the same use. If this site, Main Stay Suites, was in the "LC" zoning district, none of these variances would be required; all requested signage in this application would be allowed per the City of Wichita Zoning Code.

The applicant indicates that persons traveling along K-96 are unable to identify the building until they are past the exit ramps. Mainstay Suites will eventually occupy space on the K-DOT "Informational mini-billboards," but these will not be in place for at least two years. According to the applicant, in the past three months their occupancy rate has

been only 12%, “with the national average of this hotel group being 70%.” The applicant cites “no visibility” as the number one reason for this low occupancy rate.

**ADJACENT ZONING AND LAND USE:**

NORTH	“LI” – K-96 and Candlewood Hotel
SOUTH	“LC” – Marriot Courtyard, under construction
	“SF-6” – Fox Pointe Residential entryway
EAST	“LI” – K-96/Webb Road Intersection
WEST	“GO” – vacant

**VARIANCE #1: Variance to increase the total amount of building signage to from 32 square feet to 192 square feet**

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is zoned “GO” General Office in an area where other hotels are located, but on property zoned “LC” Limited Commercial or “LI” Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and safety reasons, identification and visibility needs are different than those along standard arterials.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will face the K-96 frontage, not the residential area.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed more signage. Identification of this hotel is difficult for persons traveling on K-96. It was not the intent of the zoning regulation to restrict this usage, which is more commercial in nature, with the limitations designed into the signage requirements for the “GO” General Office district.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the “GO” General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to increase the total amount of building signage to 192 square feet be GRANTED, subject to the following conditions:

1. This increase in total building signage shall apply to the addition of one building sign on the northwest façade of the hotel, as indicated on the submitted elevation drawing.
2. The additional sign approved by this variance shall be limited to a non-flashing internally-illuminated sign and shall conform to the submitted elevation drawing and sign design.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

**VARIANCE #2:** Variance to increase the height of a building sign from 30 feet to 31.5 feet

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is zoned “GO” General Office in an area where other hotels are located, but on property zoned “LC” Limited Commercial or “LI” Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and the added height is required for identification and visibility.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will face the K-96 frontage, not the residential area.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed more signage. Identification of this hotel is not possible for persons traveling southbound on K-96. An additional sign on the northwest façade with the added height would provide identification of the building on southbound K-96.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the "GO" General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to increase the height of a building sign from 30 feet to 31.5 feet be **GRANTED**, subject to the following conditions:

1. This increase in sign height shall apply to the addition of one building sign on the northwest façade of the hotel, as indicated on the submitted elevation drawing.
2. The additional sign approved by this variance shall be limited to a non-flashing internally-illuminated sign and shall conform to the submitted elevation drawing and sign design.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

**VARIANCE #3: Variance to increase the size of a pole sign from 32 square feet to 130 square feet**

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is zoned "GO" General Office in an area where other hotels are located, but on property zoned "LC" Limited Commercial or "LI" Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and identification and visibility of this hotel is very difficult without a pole sign for the north- and southbound traffic on K-96..

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will face the K-96 frontage, not the residential area.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed a pole sign of this size. Identification of this hotel is difficult for persons traveling on K-96 without this pole sign. It was not the intent of the zoning regulation to restrict this usage, which is

more commercial in nature, with the limitations designed into the signage requirements for the “GO” General Office district.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the “GO” General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to increase the size of a pole sign from 32 square feet to 130 square feet be GRANTED, subject to the following conditions:

1. This increase in square footage shall apply to one on-site pole sign along the K-96 frontage of the hotel, as indicated on the submitted site plan.
2. The pole sign approved by this variance shall be limited to a non-flashing internally-illuminated, non-rotating sign and shall conform to the submitted sign design. No additional signage or logo shall be placed on the pole or supporting structure.
3. The sign shall be installed within one year of the resolution granting this variance shall become null and void.

**VARIANCE #4: Variance to increase the height of a pole sign from 20 feet to 35 feet**

**UNIQUENESS:** It is the opinion of staff that this property is unique, inasmuch as the property is zoned “GO” General Office in an area where other hotels are located, but on property zoned “LC” Limited Commercial or “LI” Limited Industrial. These commercially-zoned districts are provided greater flexibility in signage by the Sign Code. Additionally, this property is located along an expressway, and identification and visibility is difficult without the sign height requested.

**ADJACENT PROPERTY:** It is the opinion of staff the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as adjacent properties of the same use are all allowed greater signage flexibility than this site. Residential property to the southwest should not be affected by the additional signage since the new signs will face the K-96 frontage, not the residential area.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulation may constitute an unnecessary hardship upon the applicant, inasmuch as surrounding hotels, which compete with this hotel for business, are allowed a pole sign of this height. Identification of this hotel is difficult for persons traveling on K-96. It was not the intent of the zoning regulation to restrict this usage, which is more commercial in nature, with the limitations designed into the signage requirements for the "GO" General Office district.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the signage allowed if the variance is granted is well within the limits of what would be allowed if the property was zoned commercially, which is more common for this type of usage.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulation, inasmuch as the allowance of this type of usage in the "GO" General Office district is intended to accommodate the use, but not necessarily with all the full restrictions that would be imposed on an office-type usage. This is recognized by the requirement of the larger lot size in order for this usage to be permitted by right.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to increase the height of a pole sign from 20 feet to 35 feet be **GRANTED**, subject to the following conditions:

1. This increase in height shall apply to one on-site pole sign along the K-96 frontage of the hotel, as indicated on the submitted site plan.
2. The pole sign approved by this variance shall be limited to a non-flashing, internally-illuminated, non-rotating pole sign and shall conform to the submitted sign design. No additional signage or logo shall be placed on the pole or supporting structure.
3. The sign shall be installed within one year or the resolution granting this variance shall become null and void.

**MALONE:** Would you show me where the property line of that property is?

**VERTS:** The property line?

**MALONE:** I think I know but I am just trying to verify.

**VERTS:** This line here. (She continues with staff report and slides.)

**MALONE:** Could you tell me how tall that building is?

**VERTS:** I have to estimate. I would say about 40 feet to the top of the peaks here. I am guessing and probably the applicant would be better able to tell you. (Again she continues with staff report and slides.) I would be happy to answer any questions you may have.

**PITTS:** Any questions for staff?

**BABICH:** I would be interested in the notification that went out with regards to this zoning requests because in reading these notations, there seems to be some misunderstanding about where the pole sign is going to be.

**VERTS:** The notification area did not extend into this area. A lot of those protest letters are from the Wilderness Neighborhood, which is farther on down 29<sup>th</sup> Street. That subdivision is outside of the official notification area. I know some of those refer to this being a change in zoning which was a misunderstanding on the author's part of the letter.

**BABICH:** Several of them think that a pole sign is going to be on 29<sup>th</sup> Street.

**VERTS:** On 29<sup>th</sup> Street? The people that I spoke with, I tried to explain that there was not a site plan sent out with the notification. I talked to many people and the people I spoke with I tried to explain that it was actually not on 29<sup>th</sup> Street but set back on the K-96 side of the building. Obviously either that did not come across or the people that are writing those letters are not people that spoke with me.

**BABICH:** Even the Homeowners Association letter indicated that it would be 29<sup>th</sup> Street.

**VERTS:** Again, I was not contacted until, after I think some of these letters were sent out about the specific location. I do not believe that they came into see the site plan prior to their meeting. They had a Homeowners Association meeting sometime last week.

**FOSTER:** Lisa, could you just show us where again, is the pole sign within that red area there?

**VERTS:** Let's see the best way to do this...the building. It is easier to show you on the site plan. If you look at the shape of this lot, and 29<sup>th</sup> Street obviously curves here, the building is here, and the pole sign is here. So if we were to translate that back to the aerial, we are about right here on the pole sign.

**PITTS:** Just for my clarification, so that we can keep this straight. You mentioned that the way we have got these listed on the report actually should be 4 to 1 instead of 1 to 4.

**VERTS:** On the front page of your staff report they are listed in correct order. The pages subsequent to that are out of order. So if you are going through the staff report, you are going to come across variance number four, first, and then, Three, Two, One.

**SIMMERING:** Mr. Pitts, that is my mistake and I do apologize for that being sent out that way and I am truly sorry, I did not mean for that to happen, the copier machine was messing up that day.

**MILLER:** The page numbers are correct they just got put into the wrong sequence.

**PITTS:** Any other questions for staff?

**SWANN:** Do the other hotels and things around there, do they have a pole sign like that?

**VERTS:** Candlewood Hotel across K-96 has a pole sign that is actually larger than the one requested here. It is greater than 150 feet. I think it is about 152 square feet. They are permitted by right in the "LI" District. The Marriott here is in a "LC" District and they are permitted by right to have this amount of signage if not more.

**BABICH:** Lisa, back to the site plan, if you would. Where it is proposed to have the pole sign and you draw a straight line across Bent Tree that is a residential area?

**VERTS:** Right here?

**BABICH:** Right, and that would be in the line of sight, that pole sign would be in the line of sight of the residential area to the west of Bent Tree?

**VERTS:** It is in the line of sight of the home along this edge of the subdivision.

**BABICH:** Across the street from Bent Tree?

**VERTS:** There are homes on both sides of Bent Tree.

**BABICH:** I mean if that sign were moved to the west, if his hotel would block it isn't it possible to make everybody happy then?

**VERTS:** That we would have to discuss with the applicant. I am not sure how much space there is.

**PITTS:** Any other questions from the bench for staff? Are we going to go ahead now on #3 and #4 or come back?

**VERTS:** I have gone through all four variances.

**PHILLIPS:** Just one comment, something to consider, Mr. Babich is suggesting about moving it back, please note that there is a 20 foot utility easement that does run along that side of the property there. If it is a setback it is one thing, if it is a utility easement you just have to consider whether that is a viable option. I don't think you can put a sign in that. It may be they have considered that once before. We can certainly hear from the applicant when they come forward.



**PITTS:** Thank you, Lisa. Is there anyone in the audience to speak for the variance.

**LARRY BOGGS, BOGGS SIGNS, WICHITA:** About eleven months ago we were before you again on this particular hotel. It kind of hurts in a way that we have so much ground and we are so limited, we can do so much with the building but so very little with the sign. I am sure that Mr. Clark, and I am speaking for him right now that he was unaware how much affect exposure would have on the future of his business. I think in our letter to the Planning Commission, originally, it did state how we are right now suffering on our occupancy rate compared to the national chain.

As you drive up and down K-96, and that is where our business and potential business comes from, we are not visible at all. In fact, I remember the Board's comments right before we left. You said "Are you sure this is all you are going to need for signs?" We thought it was, but we were sadly mistaken. As, Lisa has told you there is "LC" Light Commercial to the South. To the East, "LI" Light Industrial and to the Northeast and North of us. I think that if you jump one more lot back behind us it switches to "LI" again as it runs on Cypress around our side of K-96. So these four or five lots right up here at the corner are the only ones that are really limited down to "GO". What we did is try to come up with some signage that if we were "LC" Light Commercial would be allowed, very easily be allowed and not be obtrusive to anybody in the general public out there. That really is the only place that Mr. Clark has asked to bend the rules a little bit for the zoning on this property. We are doing it strictly so the business can be successful in the future. I do know the sign ordinance very well. Does anybody have any questions to me about anything of this? Otherwise, I would like for Mr. Clark to address you.

**PITTS:** Any questions for Mr. Boggs?

**MR. PAUL CLARK, OWNER OF MAINSTAY SUITES:** In regards to our signage you can still see that we are not asking for signs on the lower side of this building because I feel it might be obtrusive to the homeowners. The first sign that we are asking for on the back of the building does not face any homeowners or businesses it strictly faces K-96. Our business, hotel business nationwide estimates about 32% comes from reservation and the rest of it is walk-in traffic, our walk-in traffic is less than two customers per day. We are on a very busy street and when we do get customers in they say how hard we are to locate and that they have driven by us two or three times. I feel that it is imperative that we get more signage. The hotel is there and it is not going to go away so the best thing for any neighborhood is for a business to be successful. As long as we are successful than we can take care of our property and maintain it in a very business like manner. But, we are fighting a declining occupancy because of lack of signage. And we did go out of our way at first to stay within all the regulations, we never asked for a pole sign up front and stuff and I am in favor of moving the pole sign back if we can. I think that Mr. Boggs may have already looked at that. But if we can put it out behind, or even further back and hide it by the building, I have no problem with that. Then it should not be a problem with anybody. The way that we have it now it might be as far back as we can go, I don't know for sure, I am not the architect on it. But, if we

can move it back I give my word that we would move back as far as we can and get it behind the edge of the building. As I said the last time that I was here I like to be a good neighbor and good neighbors try to live by the rules if they can and only ask for favors of the neighborhood when they have to.

**PITTS:** Any questions for the applicant from the bench?

**PHILLIPS:** Someone asked, Mr. Clark, about the height of the building?

**CLARK:** It is about 42 feet if we go back to the one slide, the bottom of that side. <TAPE CHANGE AND NOW THEY ARE LOOKING AT SLIDES.> That is fine, right here is about 31 feet. So the building is about 42 feet tall.

**PITTS:** Does that answer your question Randy?

**PHILLIPS:** Yes.

**MALONE:** Mr. Clark, what traffic are you trying to catch?

**CLARK:** Our biggest clientele obviously has to be the ones going North and South on K-96 you all might call in east and west I don't know. But, our major traffic has to come off of there. KDOT, we have applied for many signs from them, a mini-sign from them, they are not going to give us one until they have two or three business wanting them. That is probably not going to happen for a long time. We have petitioned those people over a year ago. They said when they get to hotels they would consider it.

**PITTS:** So you are trying to attract the business going South or North?

**CLARK:** Both directions. There is no signage going south. You are way past the hotel before you can see our sign. Going north and especially after the Marriott gets done, you will not be able to see any of my signage on this hotel until you are past the hotel once again. Because their hotel and the stuff being built down on the corner is going to totally block the view from the building until they are way past the intersection to get off.

**MALONE:** Could you please put the aerial back up there please. I am not sure I agree with that statement.

**CLARK:** Our sign is about right here.

**BOGGS:** The building sign?

**CLARK:** We have one sign over here, a little sign that is about 8 feet tall.

**BOGGS:** We presently do have a monument sign, which is under the "GO" code. It is 32 square feet and it is about 8 feet to the top of it, it is a 4 X 8 monument sign. It is by the entrance there on 29<sup>th</sup> Street. What he is talking about is the signage and the signage

on the front of the building will be totally hidden by anybody traveling Northwest on K-96. I think that is what he was trying to say.

**CLARK:** Yes. There is still a vacant lot right here, I am sure they are going to build something there someday.

**PITTS:** You own that lot?

**CLARK:** No, I do not own that lot. I do own this lot.

**BOGGS:** He is not opposed to it.

**PITTS:** Any other questions to the applicant? Thank you very much. Are there any persons in the audience to speak for this variance? Any persons in the audience to speak against? Please state your name.

**KEN BANGSTON, I LIVE IN FOXPOINT, JUST SOUTH OF THIS AND I WOULD LIKE TO SPEAK BOTH AS A RESIDENT THERE AND ALSO AS A CITIZEN OF WICHITA:** I have no problem with the signage to the northwest of the side of the building. As they stated it does give them a sign on all visible sides of this structure. This structure is prominent in its height in my opinion and can be seen very well from any direction you are traveling on K-96. I oppose the enlargement of the sign along K-96. Mainly because of the aesthetics along the whole corridor, up from K-96, through the park area and along property that Koch owns and through much of the commercial and industrial area. Much of the signage is attached to buildings and it is good graphics and therefore you do not have competition of signs blocking buildings with their signs on them as well. So from an aesthetics standpoint you do not have signs competing with signs. So therefore I would say to leave the pole sign alone and do not allow an increase on it because I think the building itself is adequately visible with that signage. More importantly it does not detract from the corridor as far as billboards and large signs that just detract from our overall appearance of the community. A lot of signage today tends to be much more crisp and compact. Bradley Fair for example, low signs, well landscaped, etc. I do not believe that anybody has any problem finding this building from its physical presents. Any questions?

**PITTS:** Thank you very much.

**CHARLIE LARSEN, I REPRESENT A GROUP OF INDIVIDUALS WHO ARE CURRENTLY UNDER PLANS TO DEVELOP THE VACANT LOT DIRECTLY WEST OF THE MAINSTAY STREET PROPERTY AT THE CORNER OF 29<sup>TH</sup> AND CYPRESS:** We plan on putting a medical facility there with multiple doctor clinics in it. It is going to be a one-story facility. From our point of view, we will be drowned out totally by the Mainstay Suites because that building is so large. Either direction you travel, you can see that building down that highway, I am not sure that a sign at the highway would be seen quickly enough before you are past the exit to get to it anyway. It seems to me that a sign a lot further away would be more effective. However, a big

pole sign sitting there is going to detract from the entire area, as we go from the hotels to us to the dentist office, and to HeartSprings, which is a whole different type of feel than the corporate hotel situation. We really oppose the big pole signs.

**PITTS:** Mr. Larsen, can you identify from where you are where your facility is going to located?

**LARSEN:** Actually I am right here at the corner of 29<sup>th</sup> and Cypress. Three acres right there.

**PITTS:** Thank you.

**MALONE:** Your last name is LARSON, or LAWSON?

**LARSEN:** Larsen.

**MALONE:** You have a medical use at that location?

**LARSEN:** A medical facility is going in there. We will break ground January of 2000.

**PITTS:** Any more questions for Mr. Larsen?

**VERTS:** May I make a clarification on this aerial? It is very confusing. This is the entire "GO" General Office zoning, the property in question here simply is from here up to about here. Mr. Clark said that he owned this property adjacent to the MainStay Suites, Mr. Larsen has the property on the corner here. So in looking back to the question where the sign would be. Again with these new dimensions, we are looking at this as the applicant area, that new sign would be placed right here.

**MALONE:** And where is the "LC" Light commercial across the street?

**VERTS:** That is all of this area.

**MALONE:** Exactly.

**PITTS:** Thank you very much. That was helpful to me.

**FOSTER:** What kind of signs do you intend to put up?

**LARSEN:** Myself? We will have one monument sign at the driveway a monument type sign, six-foot long brick with brass lettering on the brick. That is all.

**FOSTER:** How long?

**LARSEN:** Six-foot high.

**PITTS:** Any other questions for Mr. Larsen? Thank you very much. Are there any other persons in the audience to speak against the variance?

**STEVE TATUM, I AM RESIDENCE OF WILDERNESS ESTATES:** I think our feeling on this first of all, is the precedent that will be set, potentially, to allow a variance. There was an initial variance allowed initially and we did not come and have a big beef with that. If we thought that it was going to take this kind of turn we certainly would have. We are concerned about the aesthetics approach of that whole 96 corridor. At what point does it stop? We have pole signs all along there, it starts looking like, and I do not know if anybody has been to Highway 40 in Oklahoma City, it is very, very, commercialized un-aesthetics, trashy look along there and the property values have run down because of it. We do not begrudge Mainstay's success we hope that you do have success, we want a good neighbor in there at this point, he does keep the property clean and we have no problem with that. But, the rules were set before he moved in and he knew what they had in front of him and I don't see why there would be a variance at this point. Again, the property owners around there, and ourselves, moved into the area based on the zoning that was in place. To change the rules in mid-game does not seem to be in the trust and the best interest of the City of Wichita. Again, I think the precedence set can be very dangerous to this Board. Again, for other applicants coming along, it is going to be hard it would seem to argue against that. Visibility is the claim, the only reason not to have a full hotel or a national average of 7 percent seems to be a little questionable given the over-building of Wichita and hotel rooms. It does not take a genius to look around and see every hotel that has been established recently in Wichita is not full and not meeting the national average. Again, if you want to put a business in, do your market research, see what you have in front of you, see what else the competition is doing, see what your zoning is and make your best bet. If it does not work out that is unfortunate, but that is kind of the way the world works and it is not fair to the other investors, of property in that area to allow a variance for one applicant, when we all know what the rules are when we get in. If this is the way that the City of Wichita is going to treat property owners, it is going to see continued migration to the suburbs, and again I do not know what is going to be left. The Wilderness Area, The Foxpoint Area are very aesthetically appealing and the other businesses. It is great to hear that we have some light medical facilities going in. Some of the dentist office across the street in HeartSprings if you drive through that area it is very nice; to ruin that with pole signs and larger signs on buildings just seems to be a betrayal of trust to the homeowners in that area and other business owners. Thank you for your time.

**MALONE:** I have a question for Mr. Tatum. We hear these cases and have to approve these or deny these cases based on certain conditions: uniqueness, adjoining property, etc. If that was zoned light commercial, I understand your point, you bought it under a "GO" zoning situation. If that sign was put on the other side of the building, where it was not seen from the residential area, do you think that it still has the same effect on you as a neighbor?

**TATUM:** Well, again, I do not think that we are in a no win scenario towards where we just don't want it because we just don't want it. I think what we are looking at is trying

to stand up into the future of what is going to go along K-96 and the precedence is set by allowing a variance of a general office zoning area. Again, to hide the sign from us, from me, that is not a problem, but you know if everyone was looking out for themselves as individuals I do not think that we are going to grow as a city that way the way we want to. So, it does not seem that again to allow the sign just because it is blocked from the people that are challenging this, wouldn't seem to be the direction to go. The direction would be, what are the rules, are we going to change the rules in mid-game and allow it because a business is suffering? Again it is unfortunate but it does not seem that it is fair to the other owners in the area and that is what we are here today, to protect those rights.

**PITTS:** Any other questions for Mr. Tatum? Any other members of the audience to speak against the variances request? If not, we will confine the discussions to the bench.

**MALONE:** These are tough deals because you know it is obvious that the property on the corner that Marriott Courtyards has is zoned "LC" Light Commercial can do some major, major signage and again you have to look at the five conditions. I guess, I am in a situation where I would make some comments relative to the building sign on what they are calling the northwest elevation. Personally, I have no problem with that signage. I do not have any problem with the height, or the sign itself.

**PITTS:** You are speaking of the building sign?

**MALONE:** I am just purely speaking about the building sign and I am glad that Randy made the suggestion about having these signs separate. You know it is kind of signing this thing to death. You have got three building signs then a pole sign. But, in terms of the building sign I have got as a member of this Board, I have no problem with the height or the size of that sign.

**PITTS:** Dave, did you have any other comments?

**BABICH:** I would like to address more specifically the option of moving it to the west. As, Randy pointed out there is a utility easement there. Does that preclude building a sign further back?

**VERTS:** Dale, has just spoken with Vicky Huang, in Public Works, and she thinks that it is very possible to put the sign at the edge of the easement. Then have it actually hang over into the easement on the one side of the sign with a hold harmless agreement of that overhang being there.

**BABICH:** Thank you.

**PITTS:** Any other comments? How could we show that on the Board if we were going to move that sign? I realize that is not the request but the applicant has stated that they would be willing to go along with that.

**VERTS:** I guess what I am imagining and anyone can step in and clarify, this is the 20-foot utility easement here, if the pole was placed at the edge of that easement, then it could actually overhang at the top of the sign, the meat of the sign will overhang into that. There is a driveway here so I am not sure how this would work.

**MILLER:** The fire department usually likes a 20 foot drive, that looks like that is 24 and some inches.

**PITTS:** I thought we had discussed relocating the sign parallel to back to the northwest.

**VERTS:** Back this direction, so that it would be hidden from these people over here.

**PITTS:** Yes.

**VERTS:** So if we just take line of sight here, I would probably have to take it back to this point, with some kind of curbing for the driveway around it.

**FOSTER:** Lisa, just to sort of recap, I have been looking over the letters that have been received and many of them are similar. Do you know them well enough, that you can tell us where people are in relationship to the sign location?

**VERTS:** I know that several of the letters were from this FoxPoint area. I think I misspoke earlier, in that somebody from that area could maybe correct me, but I think all of the FoxPoint lots are on this side of BentTree, and this is actually where the Marriott is going in. There is a setback, and the building of course, and then there is a six foot masonry wall on here as well. Those homes are to this direction. The Wilderness neighborhood, there is the Foxpoint going farther west on 29<sup>th</sup> and then there is a large church, and then you get the Wilderness neighborhood that comes back south.

**FOSTER:** Would it be fair to say that the people in the Wilderness area could not see the sign?

**VERTS:** That is my impression from driving through that area.

**FOSTER:** Whether it was moved or not moved.

**VERTS:** That is my impression.

**PITTS:** Dave, your first remarks were that it was directly in the line of sight in what location?

**BABICH:** From the Foxpoint neighborhood on the west side of BentTree.

**VERTS:** I would agree that there are several homes at the front of the Foxpoint subdivision that, not only the building is in direct line of sight, but this new sign would be as well.

**FOSTER:** Even if it was moved?

**VERTS:** Even if it was moved. That was what I was trying to get at with the line of sight. If you have the Marriott building out to here and any potential lots in here say, back to this point, line of sight would put if you moved that building sign back to this point, I don't think that you could see it.

**FOSTER:** May we assume Lisa, that if it were put there that it would not hurt the applicant from the standpoint of on and off ramps on the interstate or on the freeway?

**VERTS:** I would defer to the applicant, I can not say. I do not think moving it that much and maybe somebody from traffic would be better to look at this, I am not sure where the off ramp is.

**FOSTER:** If you compare it to that first drawing that shows it, there is a fairly good chance. See what I mean they are in between two off ramps.

**VERTS:** Right, so the new sign would be here.

**FOSTER:** Moving it a few feet or 20 feet is not going to effect it at all. I think that is why they were not opposed to changing it.

**VERTS:** I am not sure if that would make a difference, but the applicant is certainly in agreement with moving it.

**SWANN:** Where is the off-ramp coming off of 96 if they see it coming?

**VERTS:** This is the off-ramp here, coming northwest on K-96.

**MALONE:** I am not very smart, but that is why I asked the question early as to where the property line was. Because as sure as if I was the hotel, I would want to be putting that sign to the very far corner of that lot, so that those people going northwest on K-96 would see me before they got off that exit ramp. That's why I am not sure that the pole sign is really that big of a deal as they are making it. Because they have not positioned it right in my opinion.

**VERTS:** If it was placed at this corner?

**MALONE:** Yes, can you put it there? And the neighborhood would not see it. I am not suggesting putting it there, do not misunderstand me.

**VERTS:** There is an additional utility easement, the farthest that they can place it is at this point. Whether or not the Foxpoint people could see that, I am not real sure how far the Marriott building is extending and I know that it is fairly close to the road and it might be blocked from their sight.



**FOSTER:** Lisa, you may or may not want to answer this question and I would be interested to hear from any of the other members as to their observation, but, I have not heard anything that having a sign higher would mean that it could be seen better. It is not hidden from the highway, the present sign, is my impression.

**VERTS:** The present sign on the building?

**FOSTER:** We are talking really about having a bigger sign to have the opportunity to see it better, now is that a fair evaluation?

**VERTS:** I think the higher sign, this K-96 is elevated, coming over Webb. It is my impression that if you are traveling northwest on K-96, because if you are on this side of the freeway you can not see the building sign as it is placed today because it is too low. Your line of sight is such that these lanes are in your vision.

**FOSTER:** I think that is a very important point. Dale, did you start to say something on that?

**MILLER:** No.

**FOSTER:** I think that is a very important point, Mr. Chairman.

**MALONE:** Your point being, Mr. Foster?

**FOSTER:** Well, if I am understanding what she is saying the difficulty of seeing the sign, the height of the sign was the 20 foot a variance or anything originally?

**VERTS:** There was not variance required for the front building sign.

**FOSTER:** I have not heard enough from the applicant in terms of why they need the height of it in relationship to this. But, you are telling me there may be a reason in order to be able to see it from the K-96.

**VERTS:** This is our impression. In fact, traveling there, the three of us have traveled along and it was difficult to see the building sign at its present level. Especially, because back here you are much lower than the overpass here and by the time you get over the overpass this other lane is in your line of sight.

**MALONE:** Floyd, I have a question for the applicant.

**PITTS:** For the applicant?

**MALONE:** If this is the appropriate time to ask.

**PITTS:** I think that we probably should go back and forth because we have taken these

in. Would Mr. Boggs and or Mr. Clark come back to the podium?

**MALONE:** Mr. Clark, if the purpose of advertising this hotel from K-96 with the traffic either going southeast or northwest, why are you requesting to put a sign on the northwest elevation and a pole sign? Don't they do the same thing?

**CLARK:** The pole sign as you go north. You can't see any of this signage.

**MALONE:** Right, I understand that.

**CLARK:** When they can see the sign on the side of the building they have already passed the off ramp. It is a very small sign considering the building size and it is not really visible. It is visible if you are looking straight on it but it is channel letter signage as you drive through there. I do not know that exact degree or level that you can see that sign from but it is not a very big angle that you can read that sign and identify the building. The building is very visible but who knows what the building is?

**MALONE:** Why are you requesting a sign on the building on the northwest side of the building?

**CLARK:** If we put a sign on the building there is a couple of things that can happen; if you go and look at that building, the back of that building is very, very, plain. If we put signage up there it gives us some visibility for those people coming south and we did consider putting the pole sign back further or forward further. But, the pole sign mainly is for the traffic going north and can see the property. I think the Candlewood sign is what 35 feet tall and we are not even asking to go that height. The same height as those and even the Candlewood sign I think and I have not traveled that part of K-96, I usually come up Webb Road but, from Webb Road you can not see the Candlewood sign until you are right on top of it, because the freeway blocks that sign.

**MALONE:** Let me ask Larry, if I was going southeast on K-96 doesn't that pole sign give me the same visibility as that building sign does?

**BOGGS:** Yes. As we travel northwest, and I had to see it myself, I knew what was there because I put the signs on it, and yet I could not identify the building until I was right equal with it. At 31 ½ feet only part of that sign is even visible on that northeast elevation right now. That is why I suggested that we try for the 35 foot height on that. We are not opposed to moving this sign further north, if we can gain acceptance from the utility companies, to put it in the utility easement, to totally hide it from the homeowners. That is not a bother for us at all.

**BABICH:** Except that is illegal.

**BOGGS:** No, it is not. We can get a variance.

**BABICH:** Can't you put it on the drive?

**BOGGS:** Depends on where the utilities are located. In fact I am doing one up on Tyler Road right now. As long as we get the approval from the utility companies and the landowner knows and acknowledges that he must pay for the removal and the reinstallation if the utility company deems it necessary to dig in that area.

**MALONE:** Dale that is a correct statement isn't it?

**MILLER:** Yes, as Lisa said, we talked with Vicky Huang, she is not sure if there are utility easements there, if there are no utilities there, then a hold harmless would work. She did have concern that there was sewer there and she did not want anything in it. The other utility companies would review it, and it would be handled as a vacation. To vacate a portion of the utility easement is technically what it is called.

**BABICH:** How do we approve this variance assuming that vacation could be obtained?

**MILLER:** If you specify a fairly specific location, along the north side of the building so that it can not be seen from Fox Point or whatever, that narrows it down. It is up to them to get the approval of the vacation, if they can then it is fine if they can't then they can't.

**BABICH:** Thank you.

**FOSTER:** I have a question. Mr. Boggs, when your company looked at this, did you evaluate it from different elevations? Would 30 feet work do you have to have 35?

**BOGGS:** Right now, is there a picture or a shot of them traveling on the interstate of the northeast?

**VERTS:** No.

**BOGGS:** There is not. I have driven it several times and the sign on the northeast elevation is 31 ½ feet to the very top of it. As I was in my car and as I was down the road I could barely see the top of that sign.

**MALONE:** That is on the building?

**BOGGS:** That is on the building now, yes.

**PHILLIPS:** I am confused by your numbers; let's flip back to one of the pictures.

**CLARK:** We do not have a picture of the 31-foot sign.

**PHILLIPS:** What is your floor to floor on that building? What is your ceiling height?

**CLARK:** 8 feet.

**PHILLIPS:** Then that sign is not that high.

**BOGGS:** Randy, you are right. There should be no BZA for height on this. I did state on the drawing, that it was 25.6 to the very top of it on the northwest elevation. It is lower than the one that is on the northeast elevation.

**PHILLIPS:** I am just trying to point that out because as we have looked at this thing we have talked about that height, the 35 foot request is actually going to be 10 foot higher than what we are seeing on the building. I just want to make sure that the numbers there are clear. If that is 25 feet than that means you are asking for 10 feet higher than what is appearing here.

**BOGGS:** What I am saying on the backside of the building the top of our sign is about right here. If you look on that drawing, it says it is 25.6 inches to the top of the sign. When we get around on this elevation here, the very top of the sign, in fact, I think I overhang part of this little wire here just a tiny bit. This is about the 31- foot level, what I was talking about is.

**PHILLIPS:** If the top of that window on that 3<sup>rd</sup> floor is 25 feet, you are going to have to be 6 feet above that to be at that 31 foot level. You said that you did not have a variance request for a height increase?

**BOGGS:** I had a variance for the, not for here but we had a variance for a 1 ½ foot on the northeast elevation. We are actually below the 30-foot level now on the northwest elevation.

**PHILLIPS:** Basically the edge of that roof, the majority of it is about 25 foot?

**BOGGS:** I measured it out exactly and it is 25.6 foot where you see the top of the letters at on that drawing right now.

**PHILLIPS:** I would be closer to writing 31. I am only saying that because as we are trying to understand the scale of this thing, the 35 feet that you are asking for on the pole sign is actually going to be 10 feet above what is shown on the building. You are going from 25 to 35 instead of 31.5 to 35. I am just trying to bring that out so the rest of the Board members have a scale of things here.

**BOGGS:** About a foot above that peak right there is 35 feet, if I were to make an educated guess.

**PHILLIPS:** That is kind of where I figure just going through the math on these things.

**PITTS:** Any other questions?

**PHILLIPS:** I only bring that up for the Board to consider as they are looking at this

thing. There is some difference as you are trying to compare the numbers and what they are saying is 31.5 foot.

**PITTS:** Now Randy, the issue that you are addressing now is on variance two, to increase the height of the building sign from 30 feet to 35 feet?

**PHILLIPS:** No, it would be variance four that is the greatest extent. If you are talking about ..?

**PITTS:** You were talking about a pole sign before.

**PHILLIPS:** Right. If they are saying 31-foot on the building that is fine. What I am trying to clarify is that when they pointed to a certain point on there and they were saying that was 31 feet, it was not. The edge of the building, the eave, if you want to call it that or the edge of the roof there is roughly 25 feet 6 inches. Mr. Clark said the building was 42 feet tall.

**CLARK:** I am just assuming that what he said was right on the height of the building.

**PHILLIPS:** I understand that and you will have a chance to clarify that but just saying when you add up all of the dimensions and everything here, what we are hearing is something different. The numbers are not matching up with what reality is. This is what we do, I can walk you through the math, but the sign on the front is probably about 18 feet and I am just trying to give the Board this information so that they can have this for their consideration.

**PITTS:** You mean as I look at this now.

**PHILLIPS:** Just look at the building is about 25 ½ feet. What it appears though the sign that they are showing us is going to be up to 31'6", it is not. It is going to be at 25'6" that is what I am talking about. That is why I do not quite understand the 31'6" here, but if that's what they are asking for. I am just telling you that the pictures the one that is on there that says MainStay Suites, the top of that is right at 25 feet 6 inches, not 31 feet 6 inches. So if you are considering a 35 feet then you better go 10 feet above that because that is how tall the sign will be.

**FOSTER:** Would you please explain that a little bit more Randy?

**PHILLIPS:** The numbers that they are giving us as to what is represented on the picture here is not accurate. The application picture, we have of the graphic with the application here if you look at the northwest elevation you see the sign over there that says Main Stay Suites? The top of those letters is about 25 feet 6 inches as stated by Mr. Boggs and the applicant. Previously in the application they were saying that it was going to be about 31' 6" or their other sign will be that high. It is just a discrepancy that I was trying to clarify so that everybody has the right information.

**PITTS:** Well taken. I hope we have not gotten as confused as I am because we are going back from the pole sign to the building sign.

**PHILLIPS:** I mentioned the building sign, probably, a little bit out of context. Because of the fact that as you are considering what will be the apparent height of that pole sign in reference to the building it made it sound like there was not a very large 4 ½ foot difference. Actually there is almost a 10-foot difference in what appears to be the top of the sign here and the top of the pole sign. I am not trying to influence anybody, simply just give us enough information to make an informed vote.

**FOSTER:** Would you say Randy that the pole sign is higher than the building?

**PHILLIPS:** At 35 feet it probably is going to be close to the height of the building.

**FOSTER:** Mr. Chairman, I do not know what the timing of the applicant is, but it seems to me that some thinking needs to go into figuring these accurately and also I have some concern about the height of the pole sign. I see the need for it in that location. I wonder whether it has to be fully 35 feet and has to be as large as they say. Whether it could be moved. It seems to me, that they need to do some work on their part. If they want to represent to the Board, if it was carried over.

**PITTS:** Are you speaking if they are interested in carrying over the request, all four variances? Or the variances for the building signs only? Or the variance for the pole sign only?

**FOSTER:** I was thinking more of the pole sign. I thought they might want to think of the relationship with the two of them and what they need.

**PHILLIPS:** Mr. Foster, I am going out on a limb here, are you maybe suggesting that we consider request number one and two today and let them go back to the drawing board on three and four? If you are suggesting that I am in favor of it, because I think that the Board may be a little confused and that the information that we have here keeps coming to us from the audience. I think that if they are astute they are going to see that basically that any vote today might not be in their favor and it might not be based on valid information. I think I can feel pretty comfortable casting a vote for number one and two but three and four I think need to be reconsidered for the application.

**FOSTER:** The answer to your question, it is always less intrusive with the sign on a building rather out, shall we say, in front. I have noticed in the past that this building is hard to find and I do not go there but I am very much aware of the problem. I have had people in the car and they would say, "what is that building?" It is just hard to pick out the building with the sign that is on it. I would agree with you that maybe we could act on variance one and variance two and then ask them to restudy three and four.

**BABICH:** I have one concern, and that is that the pole sign not be in the view of the neighbor. It seems to me that we are able to clarify that at this setting and move on. The

height of the sign, it is good that has been brought out that it might be roughly the height of the roof plus or minus two feet. I am not concerned with as long as we get that sign out of the sight of the neighborhood than I would be willing to grant the variance on all four points.

**PITTS:** I think that it would be prudent for us to just go ahead and just consider variance one and two and then make a decision on consideration of three and four. What does the board think of that?

**MALONE:** I will make a motion on the first two variances.

**MALONE moves and PHILLIPS seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance to increase the total amount of building signage to 192 square feet and the variance to increase the height of a building sign from 30 feet to 31.5 feet be granted.**

#### **MOTION CARRIES 7-0.**

**PITTS:** Now, possibly you may want to listen from the applicant again on variance three and variance four to see if we are together on whether or not they agree to move it or relocate it or whether or not they want to rethink it.

**FOSTER:** I would like to know the height of the sign in relationship to the main portion of the building.

**BOGGS:** The very top of the building is 37 feet 8 inches right here. The reason why I suggested the 35 feet to begin with, if I am not mistaken this road-bend itself right here is about 25 feet. When you are back to the south east of that and you are in an automobile, and you are looking up an elevated highway and a crossed elevated highway, the top of this building comes into view down to right about here. You could view half of those letters you can not see what they say but I can view half of them at 31.5 feet. The entire sign is not visible from down the highway but the upper-portion of the sign, hopefully the part that says Mainstay Suites is. It would be about right here to the top of it, if this 37.8 the top of the sign would be about that tall. If we lower the pole sign less than 35 feet, it is only going to be visible for the people from the southeast bound, or for the people that are northwest bound. By the time that they see it, I am not sure they would have time to react, by the time they have time to read it all, I am not sure they would have time to react.

**PITTS:** So as I understand it, the applicant does not have any problems with relocating the pole sign based on the acceptance of the utility easement.

**BOGGS:** Correct. To the northwest of where we showed it on the site plan.

**PITTS:** And out of view of the concerned neighborhood.

**BOGGS:** Centering it on the building, if you will, in with the building frontage.

**BABICH:** Mr. Pitts, I would not want that to be contention upon them getting the variance. In other words if they didn't get the variance then they get to leave it where it was in the first place. If they didn't get the variance there would not be a pole sign.

**DICKGRAFE:** If the Board wants to make it a condition of approval, you could add a condition something along the line of the pole sign shall be placed "in" or "at" the south edge of the utility easement on the north side of the motel. Which I think if they can put it in the easement that is fine. If they can't then it has to be at the south edge of the easement, which, is what I think public works has said would be acceptable. Then that is a condition if they can't reach that or can't make that work then the variance would fail there would be no sign and they could certainly appeal that decision with that condition to District Court if that is what they want to do.

**BABICH:** Ok, I just want to make sure that plan "B" is going back to the original place.

**MALONE:** I have a question for Larry Boggs, if the whole idea of putting that pole sign up is to be visible for the traffic heading northwest, why don't you move the sign a 180 feet to the end of the property line?

**BOGGS:** To the northwest or to the southeast?

**MALONE:** To the southeast. Why wouldn't you put the sign there?

**BOGGS:** I do not know? Mr. Clark can you answer that?

**CLARK:** I would have no problem with that.

**MALONE:** My only point is and there is enough people in this room that know I am pro-business, but frankly with that pole sign at that location you are going to go by it anyway. For that pole to be seen to catch that exit to come down and to get to that hotel, it is going to have to be 40 feet tall to see it as you come up over that K-96 ramp. So, frankly, I am not sure that it really makes a whole lot of difference. Again, I am editorializing, and I apologize, if I am coming from the Turnpike to head that direction, and I need a hotel, I am going to see the Marriott sign, now, what do I do? I got to get off and I have to go by your hotel and I have to see your letters on the side of the building. Now, I have got two choices, your hotel, and the Marriott hotel, if I am coming from the southeast I see your building sign on the side of the building the one I just approved and that is my feeling on the pole sign.

**FOSTER:** Mr. Chairman, I would still like to see them have an opportunity to study this, this is a very important item for this hotel, they made that their point, that is why



they are here. I hope they feel that they have had the opportunity to present everything they can and that the Board fully understands it. I think they should be asked if they want to do anything else?

**PITTS:** Are you suggesting that they may want to delay the variance three and variance four?

**FOSTER:** I am just saying based on what they are hearing, and we have heard, whether they think they would like to think this over and come back. Is there some benefit to that?

**MALONE:** Bickley, I think that is a good suggestion, I think it would also be a good suggestion for the Board members to go out there and drive that highway, going northwest on K-96 and looking at the hotel.

**FOSTER:** Mr. Chairman, I am going to make a motion.

**PITTS:** I think Mr. Foster, since we have gone back and forth several times here, we may want to make an exception. I saw the hand being raised by one of the opponents and I think just to be fair, we should allow him to come forth again, unless there are any objections.

**BANKSTON:** I appreciate the opportunity. I am familiar, not just because I live up there but from a lot of design issues working over the years in that area. I am very familiar with the elevation, etc. This hotel is very easily seen as you drive along the highway, heading to the south and east. The applicant has made mention that KDOT will allow signage on their sign at an appropriate time. Marriott will be done, I would suspect in about six months. Candlewood is complete and you could have three hotels get together and put up signage. Marking considerably down the road on an information sign, which is on the appropriate side for the driver to see. The expectancy that wouldn't be in the passing lane for example, most of the time they would be seeing the directional and informational signs very easily. This is an overpass, there is landscaping that has been planted, trees planted on the brims, that over a period of time I would expect would grow in elevation and block other views. I do not think that the line of sight coming from the southeast, or going northwest, will ever be that good, unless you continue to raise the sign and enlarge on it, which is competition. But, again, as a citizen, not just as a neighbor to the south what I am looking at is graphics throughout our community is to the number of signs. This building will now have three signs on it and it is plenty visible in my opinion. How many signs do you have to have on a building on a building in order to find it? That is my question. Think about the corridor, what do we want as far as an image? Somebody cited from Oklahoma. Branson, Missouri signs, signs, signs, there are books written on signage on what we do not want and what we would like to have in a community. Some famous statement "I would like to see a tree". I can not quote it, but, I remember seeing a book that if I could just see a tree instead of a sign occasionally. This is a good corridor right now. It is being landscaped, the signage is on the buildings, so if they start adding to their signage, add a larger sign, then who is going to compete with

them? If they have to position their signs so that they can be seen from a different vantage point. I just think they have adequate signage and just leave it alone.

**PHILLIPS:** I am not sure if everyone here is familiar with your experience in the area, would you please clarify that as far as the company you represent.

**BANKSTON:** Mid-Kansas Engineering, we designed the interchange, the bridge, and we are quite familiar with the on and off ramps and the visual opportunities. As well as what KDOT is doing. I also serve and have served for a long time on the City Manager's Aesthetic Design and Review Board and we look for signage. I know what you are up against and I know what you are thinking about. But, for us to have a certain image in the city, part of it is signage.

**PHILLIPS:** I would like the Board to be aware of this as they consider this.

**PITTS:** Unless there are some other people to speak from the audience, we will bring it back to the Board again, Mr. Foster I believe I cut your motion off.

**FOSTER:** For the purpose of providing an opportunity for the applicant to benefit from the two hearings that they have been to, and to rethink their proposal, which is very important to them. And to take into account all they have heard from the neighbors, and also to consider this in relationship to the ability of people to see it from K-96 and also as Mr. Malone made a point, for the members themselves to take an opportunity to look at this.

**FOSTER moves ROGERS seconds to defer the pole sign variance #3 and the variance #4 be deferred until the next meeting.**

**MALONE:** Just for the record, this is my last Board meeting. I will not be attending the next board meeting and I just want to make that very clear.

**PITTS:** I am sorry. I do not understand you.

**MALONE:** I am stepping down off of this Board effective after this meeting. I will not be at the next Board meeting so that may or may not be important.

**PITTS:** With whom am I going to be disagreeing with?

**LAUGHTER**

**CONNIE TATUM:** I am curious, will we all get noticed again, you have said that you are postponing it but how will I know.

**PITTS:** If we vote for deferral? Staff can you explain that.

**MILLER:** We typically do not send out notices for meetings that are going to continue like this one has while you are in session. If you will please sign the sheet we will send out notices to those that sign in. But, we will not send out notices again to all the property owners within 200 feet again.

**PITTS:** Thank you for that clarification.

**DICKGRAFE:** I think the applicant may want to ask.

**BOGGS:** I will approach the bench. I will be happy, and delighted to lift a wide square footage to the height that we discussed at sometime with the Boards approval. I am going to let you drive it and see the point that I am trying to make. I have done this before in other BZA cases.

**FOSTER:** My motion was really made and the point was made by Mr. Bankston that we are setting a precedent for the area. To some extent, so I think it is worth taking this kind of time to take a look at it.

**PITTS:** We have heard a motion and second, call the vote.

**MOTION CARRIES 6-1.**

**MILLER:** Do you want Mr. Boggs to do that or just visualize. The applicant has offered to raise the sign up on a crane whether you want to take him up on that or whether you are satisfied now.

**PITTS:** I personally do not think that it would help me, if there are other members of the Board?

**FOSTER:** Do you think that would be a good idea?

**PHILLIPS:** If anyone has a problem visualizing heights and things like that in relationship to a scale portion I think it would be a good idea, if the applicant is willing to do it. It is not necessary from my standpoint, but this is my living, this is what I do.

**FOSTER:** Is this a pretty expensive thing to do?

**BOGGS:** Yes. I would like to do it to prove a point just to let you see while you think it is a big sign when you get them up in the air they are not.

**PHILLIPS:** Is it possible for us to get a better copy of this so everybody has readable information would help.

**MALONE:** Larry, it will be at the height, you will not try to trick anybody will you?

**BOGGS:** It will be correct. Please tell me of a time that you want it there and I will have it there providing that it is not blowing 60 miles an hour.

**FOSTER:** When the notice goes out for the meeting could that indicate then that the sign is up? You mail it out about a week ahead of time?

**MILLER:** We are not going to send out notices.

**BOGGS:** We will say that on 8:00 a.m., Tuesday morning, when you meet next month because we will physically hold it there with our crane.

**FOSTER:** On the day of the meeting.

**PITTS:** I am satisfied with that. I think we are clarified on this now.

#### **4. OCI Report.**

**COX:** I am hopefully going to be finishing up the towers this meeting and I think this will take care of all of our old tower cases. These are all variances to increase the height of communication towers: BZA 13-96, 1201 Wadington is in compliance. BZA 16-96, 9710 W. Central is in compliance. BZA 17-96, 3143 S. Millwood is in compliance. BZA 18-96, 3330 S. Osage is in compliance. BZA 20-96, 7000 E. Cottonwood is in compliance. BZA 23-96, 3601 Pattie is in compliance. Any questions?

**PITTS:** Questions for J.R.?

**FOSTER:** Under other items, I was in Japan in September looking at their signs, and it is quite obvious that they have no Board of Zoning Appeals and sign control. I have never seen so many signs in my life. I finally figured out something, we see pictures periodically of the main street of Toko and you see all these movies and everything else on it. It finally dawned on me why they put the signs up and down. That is their language, it never occurred to me until I went over and looked at it. In other words, our signs are east west and theirs are south are north. South because that is the way they read from right to left. They have signs on every building as long as there is no windows and literally going north to south on everyplace in that district.

**PITTS:** Thank you for your observation. I spent quite a bit of time in that part of the country and I am not going to tell you what years they were in.

**FOSTER:** I can tell Randy that I've also seen a lot of golf courses on the third floor of the hotel that we were in; there was a driving range on the hotel third floor.

**PITTS:** Land is at a premium there.

**MALONE:** My replacement is Bradley Tidemann, who is a Junior Associate at W.P. Weigands, his father is a senior person over at Weigands. Bradley is a graduate of the

University of Colorado, real sharp young man and I think you will enjoy his position on this Board.

**PITTS:** Any other business.

**FOSTER:** Have we heard back from the County Board of Zoning Appeals about their decision about combining Boards?

**MILLER:** They are not interested in combining. I thought that was reported at a previous meeting. They like it the way it is.

**Meeting adjourned 3:30 p.m.**